



This document is scheduled to be published in the Federal Register on 04/30/2014 and available online at <http://federalregister.gov/a/2014-09882>, and on FDsys.gov

NUCLEAR REGULATORY COMMISSION

[NRC-2009-0515]

Manual Operator Actions in Diversity and Defense-in-Depth Analyses

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan section; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to the following section of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition," Appendix 18-A, "Guidance for Crediting Manual Operator Actions in Diversity and Defense-in-Depth Analyses."

DATES: The effective date of this Standard Review Plan (SRP) update is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Please refer to Docket ID **NRC-2009-0515** when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2009-0515**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual(s) listed in the FOR FURTHER INFORMATION CONTACT section of this

document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may access publicly-available documents online in the NRC Library at

<http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The final revision for Appendix 18-A, "Guidance for Crediting Manual Operator Actions in Diversity and Defense-in-Depth Analyses," is available under ADAMS Accession No. ML13115A156. The staff also prepared a redline version of SRP Appendix 18-A showing the differences between the proposed and final version of the document (ADAMS Accession No. ML13240A359).

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- The NRC posts its issued staff guidance on the NRC's external Web page (<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/>).

FOR FURTHER INFORMATION CONTACT: Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-6992; e-mail: Jonathan.DeGange@nrc.gov.

SUPPLEMENTARY INFORMATION:

On November 27, 2009 (74 FR 62355), the NRC published for public comment the proposed appendix "Guidance for Crediting Manual Operator Actions in Diversity and Defense-

in-Depth (D3) Analyses” in Chapter 18, “Human Factors Engineering”. The staff received a total of 12 comments on the draft appendix from one industry stakeholder and the Advisory Committee for Reactor Safeguards. These comments can generally be characterized as: (1) requesting clarification of the draft guidance, (2) requesting additional guidance to address uncertainty in the analysis of time available and time required for operator action, and (3) requesting that the guidance be amended to allow for the crediting of actions in procedures other than emergency operating procedures (EOPs) and in locations other than the main control room. The staff made changes to the draft SRP in response to the first two categories of comments but did not make changes in response to the third category of comment. A summary of the comments and the staff’s disposition of the comments are available in a separate document, Response to Public Comments on Draft Standard Review Plan (SRP) Appendix 18-A, “Guidance for Crediting Manual Operator Actions in Diversity and Defense-in-Depth (D3) Analyses” (ADAMS Accession No. ML13115A144).

Backfitting and Issue Finality

Appendix 18-A of the SRP provides guidance to the staff for reviewing applications for a construction permit and an operating license under Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) with respect to human factors engineering. The SRP also provides guidance for reviewing an application for a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR part 52 with respect to those same subject matters.

Issuance of these SRP section revisions does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) nor is it inconsistent with the issue finality provisions in 10 CFR part 52. The NRC’s position is based upon the following considerations.

1. *The SRP positions would not constitute backfitting, in as much as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the SRP to existing licenses and regulatory approvals. Hence, the issuance of this SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—does not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future

applicants. The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP section in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

CONGRESSIONAL REVIEW ACT:

This action is a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 22nd day of April 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino,
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Policy Branch,
Division of Advanced Reactors and Rulemaking,
Office of New Reactors.

[7590-01-P]

[FR Doc. 2014-09882 Filed 04/29/2014 at 8:45 am; Publication Date: 04/30/2014]